THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

Writ Petition No.25650 of 1997

Dated 26-07-2006

Between:

Ch.Ramulu ..
Petitioner

and

The APSRTC , rep. by its
Vice-Chairman & Managing Director,
APSRTC, Musheerabad, Hyderabad and others ..
Respondents

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

Writ Petition No.25650 of 1997

ORDER:

The petitioner seeks a Writ of *Mandamus* directing the respondents herein to regularize the services of the petitioner in his post in respondents-corporation from the date of his initial appointment with back wages and continuity of service and further requests to pay the salary on par with regular employees.

The case of the petitioner seems to be that he was initially engaged in the respondents-corporation as Man Mazdoor on daily wage basis on 04-04-1978, he was paid at Rs.10/- per day and since then he had been working as Man Mazdoor under the control of the Deputy Executive Engineer (Urban) Vijayawada, without any break. The petitioner has been working under the control of Assistant Engineer (Urban) Guntur and has been paid a consolidated pay of Rs.1,081/- per month. He even received ex-gratia for the period 1978 to 1979 at the rate of Rs.163/- per month and from 1987 to 1988 at the rate of Rs.260/- per month and Rs.300/- per month. It is his grievance that despite the recommendations of the heads of Civil Engineering Divisions, the services of the petitioner have not been regularized.

The writ petition was resisted by the Corporation by filing a counter. It is the case of the Corporation *inter alia* in the counter that

there has been no relationship of employee and employer directly in between the petitioner and the corporation. The petitioner worked as a daily wager under a contractor, who carried out the work of the Corporation and therefore the petitioner is not entitled for any regularization. It is the further contention of the Corporation that even the post of Man Mazdoor in the Department has been abolished. The Corporation seeks to clarify that it is only those Man Mazdoors, who have worked directly under the Corporation, their services have been regularized and the petitioner is, therefore, not entitled to such regularization.

During the pendency of the instant writ petition, it appears, an interim direction has been given by this Court, pursuant to which, the petitioner has been paid and is being paid the scales of a regular employee. It appears, when the services of the petitioner are sought to be terminated, pursuant to another direction given by this Court, the petitioner has been allowed to continue as Man Mazdoor. The learned counsel for the petitioner represents that hardly two more years of service is there for the petitioner and thereafter he will be retired. Having regard to these facts which are emanating from the record and having regard to the fact that continuously more than a decade he worked as Man Mazdoor, the contention that the post of Mazdoor has been abolished and the services of the petitioner cannot be regularized merits no consideration.

As regards other contention that the petitioner worked as Mazdoor under the contractor and that there has been no employer and employee relationship in between the corporation and the petitioner *inter se,* the learned counsel seeks to place reliance upon a certificate issued by the Junior Engineer, APSRTC, Guntur, Dated 16-04-1979. A perusal of the certificate shows that the petitioner worked as Man Mazdoor at Guntur Section on Hand Receipt basis for the period from 11-04-1978 to 13-03-1979 and that ex-gratia was also paid

for that period. There has been no denial of the certificate. Even otherwise, when it is the case of the respondent *inter alia* in the counter that the practice of engaging labour directly by the Corporation was dispensed with in the year 1984, when that be the case, till such cancellation of the practice of engaging labour directly, there used to be the practice of engaging the labour directly. Obviously, the petitioner was taken as Man Mazdoor in the year 1978. Since then, he was working continuously. The very contention of the respondent that such a practice was abolished in the year 1984, squarely buttresses the case of the petitioner that he was taken as Man Mazdoor directly and that it was not a case that he was working under a contractor. In view of the same, the services of the petitioner are required to be regularized. If, for any reason, the post is abolished, on par with other employees of the corporation, who have been absorbed in different categories, in the absence of any disciplinary proceedings or other disqualification, the services of the petitioner are also required to be absorbed, accordingly.

For the above reasons, the Writ Petition is allowed and the respondents-corporation is directed to regularize the services of the petitioner till such time the post is abolished and thereafter as per the rules to absorb the petitioner in the appropriate post. Since pursuant to the direction given by this Court the petitioner has been paying the remuneration, there shall be no separate order as regards the payment of back wages. No order as to costs.

T.CH.SURYA RAO, J.

26th July, 2006.

skmr